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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, ~~1929~~ 1930

No. ~~458~~ 12

O'GORMAN AND YOUNG, INCORPORATED,
APPELLANT,

vs.

HARTFORD FIRE INSURANCE COMPANY OF
HARTFORD, CONNECTICUT

No. ~~459~~ 13

O'GORMAN AND YOUNG, INCORPORATED,
APPELLANT,

vs.

PHŒNIX ASSURANCE COMPANY, LTD., LONDON

APPEALS FROM THE COURT OF ERRORS AND APPEALS OF THE
STATE OF NEW JERSEY

FILED OCTOBER 24, 1929

(34,589, 34,590)

(34,589, 34,590)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1929

No. 458

O'GORMAN AND YOUNG, INCORPORATED,
APPELLANT,

vs.

HARTFORD FIRE INSURANCE COMPANY OF
HARTFORD, CONNECTICUT

No. 459

O'GORMAN AND YOUNG, INCORPORATED,
APPELLANT,

vs.

PHŒNIX ASSURANCE COMPANY, LTD., LONDON

APPEALS FROM THE COURT OF ERRORS AND APPEALS OF THE STATE OF NEW JERSEY

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IN CIRCUIT COURT OF ESSEX COUNTY

O'Gorman and Young, Inc., a Corporation of the State of New Jersey, Plaintiff,

vs.

Hartford Fire Insurance Company of Hartford, Connecticut, a Corporation of the State of Connecticut, Defendant

On Contract

Complaint

Plaintiff, a corporation of the State of New Jersey, having its principal place of business at Number 15 Clinton Street, Newark, Essex County, New Jersey, says that:

1. Plaintiff is a regularly licensed insurance broker under the laws of the State of New Jersey, and has been both prior to and since March 29, 1928, and now is, and has been for many years last past a duly commissioned agent of the defendant, Hartford Fire Insurance Company of Hartford, Connecticut, a corporation of the State of Connecticut, which is engaged in the business of fire insurance throughout the United States and duly authorized by the Commissioner of Banking and Insurance to transact the business of fire insurance in the State of New Jersey.

2. Plaintiff has been in the employ of the defendant during many years last past as its agent in the State of New Jersey for the purpose of negotiating and selling policies of [fol. 6] fire insurance to be issued by defendant to persons and upon property located in said State, and especially in the City of Newark, and County of Essex; that pursuant to the terms of said employment and prior to March 29, 1928, the defendant agreed to and did pay the plaintiff for services as such agent a commission of twenty-five per centum on each premium charged.

3. On March 29, 1928, or subsequently thereto, the defendant renewed said contract of employment with the

plaintiff herein and undertook and agreed to pay the plaintiff what such services were reasonably worth; that the same were reasonably worth the rate of commission theretofore paid to the plaintiff by said defendant as set forth in the preceding paragraph; that since March 29, 1928, and the renewal of said contract, plaintiff has through its efforts produced premiums on fire insurance contracts or policies on behalf of the defendant in the aggregate amount of $2,454.61; that the total commissions earned by plaintiff in negotiating said contracts or policies of fire insurance on behalf of defendant at the rate of twenty-five per centum amount to the sum of $613.68; that defendant has refused and still does refuse to pay plaintiff a commission on said premiums at the rate of twenty-five per centum but has paid plaintiff premiums thereon at the rate of twenty per centum, amounting to the sum of $490.92; that the defendant still owes the plaintiff a balance of commissions for acting as its agent as aforesaid the sum of $122.76, said sum representing the difference between commissions earned by plaintiff on said aggregate of premiums at the rate of [fol. 7] twenty-five per centum and commissions paid by defendant to plaintiff on the aggregate of said premiums at the rate of twenty per centum.

4. Plaintiff attached hereto a tabulation, forming part hereof marked Schedule A, to which reference is hereby made, which tabulation shows numbers of policies or contracts of insurance negotiated and written by it on behalf of defendant, together with the premiums paid therefor, and the amount of commissions paid by plaintiff to defendant at the rate of twenty per centum, and the amount of commissions earned by plaintiff at the rate of twenty-five per centum, pursuant to its said contract.

Plaintiff demands as damages from the defendant, the said sum of $122.76 with interest and casts.

Pilgrim & Ritger, Attorneys for Plaintiff.

[fol. 8] SCHEDULE A TO COMPLAINT

Policy numbers	Premiums	Commission Paid 20%	Commission Earned 25%
40184	$10 46	$2 09	$2 62
40193	41 40	8 28	10 35
40205	24 00	4 80	6 00
40210	92 75	18 55	23 19
40216	52 44	10 49	13 11
40217	31 08	6 22	7 77
40218	36 26	7 25	9 07
40220	56 25	11 25	14 06
40221	363 75	72 75	90 94
40235	71 70	14 34	17 93
40239	151 58	30 32	37 90
40240	121 80	24 36	30 45
40244	129 86	25 97	32 47
40258	814 52	162 90	203 63
40260	13 16	2 63	3 29
40271	443 60	88 72	110 90
	$2,454 61	$490 92	$613 68

Due and legal service of the within summons and complaint is hereby acknowledged this 29th day of October, 1928.

Lum, Tamblyn & Colyer, Attorneys for Defendant.

[fol. 9] IN CIRCUIT COURT OF ESSEX COUNTY

O'GORMAN AND YOUNG, INC., a Corporation of the State of New Jersey, Plaintiff,

vs.

HARTFORD FIRE INSURANCE COMPANY OF HARTFORD, CONNECTICUT, a Corporation of the State of Connecticut, Defendant

ANSWER—Filed October 31, 1928

Defendant, a corporation organized under the laws of the State of Connecticut, and authorized to do business in the State of New Jersey, answering the complaint herein, says:

1. Paragraph 1 is admitted.

2. Paragraph 2 is admitted.

3. Defendant denies that it owes the plaintiff the sum of $122.76 as in said complaint alleged for the reasons hereinafter in this answer set forth. Defendant admits all other allegations in paragraph 3.

4. Paragraph 4 is admitted.

First Separate Defense

1. Pursuant to an act of the legislature of the State of New Jersey entitled "An Act to amend an act entitled 'A further supplement to an act entitled "An Act to provide for the regulation and incorporation of insurance companies and to regulate the transaction of insurance business in this State," approved April third, one thousand nine hundred [fol. 10] and two,' which said supplement was approved March eighteenth, one thousand nine hundred and thirteen," which said amendatory act was approved March 29, 1928, and being known as Chapter 128 of the laws of 1928, it is in and by the first section thereof among other things provided as follows:

"In order that rates for insurance against the hazards of fire shall be reasonable it shall be unlawful for any such insurer licensed in this State to directly or indirectly pay or allow, or offer to agree to allow, any commission or other compensation or anything of value, in excess of a reasonable amount, to any person for acting as its agent in respect to any class of such insurance, nor to directly or indirectly pay or allow, or offer or agree to allow, any commission or other compensation or anything of value, to any person for acting as its local agent in respect to any class of such insurance, in excess of that offered, paid or allowed to any one of its local agents on such risks in this State."

And in and by the second paragraph of the said act it was provided as follows:

"Any insurer, agent, expert, person or corporation violating any of the provisions of this act shall be subject to a penalty of five hundred dollars for each and every violation to be sued for and recovered by the Commissioner of [fol. 11] Banking and Insurance, or by any citizen of this State and paid to the State Treasurer. In case any insurer is convicted of a violation of this act, every local

agent of the insurer in this State shall be entitled to the same commission or compensation, or other thing of value, for business done for the insurer during the calendar year in which the discrimination took place, on risks in this State, and any local agent may recover from the insurer in any court of competent jurisdiction, the amount of such excess commission or compensation, or other thing of value, if any, to which he may become entitled under the provision of this Act."

And in and by the third paragraph of said act it was provided that the same shall take effect immediately.

On and subsequently to March 29, 1928, this defendant had and now has several persons acting as its local agents duly authorized to represent it in writing fire insurance in the State of New Jersey; that the commissions allowed by this defendant to its said several agents so acting as aforesaid in respect to the class of insurance mentioned in the said complaint was, on said last mentioned day and from thence hitherto and now is, twenty per centum on each premium charged; that pursuant to the terms of the said statute it became and was unlawful on and after March 29, 1928, to pay to the plaintiff herein the commission of twenty-five per centum of the premium charged, theretofore paid by this defendant to the said plaintiff.

Lum, Tamblyn & Colyer, Attorneys for Defendant.

[fol. 12] In Circuit Court of Essex County

O'Gorman and Young, Inc., a Corporation of the State of New Jersey, Plaintiff,

vs.

Hartford Fire Insurance Company of Hartford, Connecticut, a Corporation of the State of Connecticut, Defendant

Notice of Motion to Strike Out Answer—Filed November 10, 1928

To Messrs. Lum, Tamblyn and Colyer, attorneys for defendant, Hartford Fire Insurance Company of Hartford, Connecticut:

Please take notice that on Friday, November 9, 1928, at the hour of two o'clock P. M., of that day, at the Court

House in the City of Newark, we shall apply to the Essex County Circuit Court (Hon. Nelson Y. Dungan, Judge) for an order striking out the answer of the defendant filed herein, upon the following ground:

First. That said answer does not set up a just, legal, or valid cause of action, because:

1. The act of the legislature of the State of New Jersey described and set forth in the "First Separate Defense" of said answer is null and void for the following reasons:

(a) Said act is a violation of Article I, Section X, paragraph 1 of the Constitution of the United States, which provides that "No State shall * * * pass any law im- [fol. 13] pairing the obligations of contracts, * * *," and is also a violation of Article IV, Section VII, paragraph 3 of the Constitution of the State of New Jersey, which provides that "The legislature shall not pass any * * * law impairing the obligation of contracts."

(b) Because said statute is a violation of Section I, of the XIV Amendment to the Constitution of the United States, which provides that "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of * * * property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws."

Second. Because said answer is in divers other respects illegal, insufficient, and objectionable in point of law.

Dated Newark, New Jersey, November 2, 1928.

Respectfully, Pilgrim & Ritger, Attorneys for Plaintiff.

[fol. 14] IN CIRCUIT COURT OF ESSEX COUNTY

O'GORMAN AND YOUNG, INC., a Corporation of the State of New Jersey, Plaintiff,

vs.

HARTFORD FIRE INSURANCE COMPANY OF HARTFORD, CONNECTICUT, a Corporation of the State of Connecticut, Defendant

ADDITIONAL GROUND ON MOTION TO STRIKE—Filed November 20, 1928

To Messrs. Lum, Tamblyn & Colyer, attorneys for defendant Hartford Fire Insurance Company of Hartford, Connecticut:

Please take notice that we shall on application to the Essex County Circuit Court for an order striking out the answer of the defendant filed herein, urge the additional ground:

(c) Said act is a violation of Section 1, Article I of the Constitution of the State of New Jersey, which provides that "all men are by nature free and independent and have certain natural and unalienable rights, among which are those of enjoying and defending life and liberty, acquiring, possessing and protecting property, and of pursuing and obtaining safety and happiness."

Dated Newark, New Jersey, November 16, 1928.

Respectfully, Pilgrim & Ritger, Attorneys of Plaintiff.

[fol. 15] Due and legal service of the within additional ground is hereby acknowledged this 17th day of November, 1928.

Lum, Tamblyn & Colyer, Attorneys for Defendant.

[fol. 16] IN CIRCUIT COURT OF ESSEX COUNTY

O'GORMAN AND YOUNG, INC., a Corporation of the State of New Jersey, Plaintiff,

vs.

HARTFORD FIRE INSURANCE COMPANY OF HARTFORD, CONNECTICUT, a Corporation of the State of Connecticut, Defendant

ORDER DENYING MOTION TO STRIKE OUT ANSWER AND FOR JUDGMENT—Filed December 19, 1928

This cause coming on to be heard before the Court upon the application of the plaintiff herein to strike out the answer filed by the defendant and the arguments of the counsel for the plaintiff and of the defendant having been heard and the Court having duly considered the same:

It is thereupon ordered that the said application of the plaintiff to strike out the answer of the defendant filed herein be and the same is hereby denied.

And the said defendant having admitted by its attorney in open court that it cannot deny the truth of the material allegations of fact set forth in the answer of the said defendant, that a commission of 20% is paid by the defendant company to certain of its agents in the State of New Jersey,

It is further ordered that judgment final be entered herein in favor of the defendant and against the plaintiff and that the said defendant recover its costs in this action to be taxed.

[fols. 17-23] On motion of:

Lum, Tamblyn & Colyer, Attorneys for Defendant.

Costs, $60.15.

Let the above rule be entered.

Nelson Y. Dungan, Circuit Court Judge.

[fol. 24] IN CIRCUIT COURT OF ESSEX COUNTY

O'GORMAN AND YOUNG, INC., a Corporation of the State of New Jersey, Plaintiff,

vs.

HARTFORD FIRE INSURANCE COMPANY OF HARTFORD, CONNECTICUT, a Corporation of the State of Connecticut, Defendant

NOTICE OF APPEAL AND GROUNDS—Filed December 26, 1928

To Messrs. Lum, Tamblyn & Colyer, attorneys for defendant:

Take notice that the plaintiff herein appeals to the Court of Errors and Appeals from the order denying the application of the plaintiff to strike out the answer of the defendant and from the whole of the judgment entered in this cause on the following grounds:

1. Because the Act of the Legislature of the State of New Jersey mentioned and set forth in the "First Separate Defense" of the answer of the defendant is null and void for the following reasons:

(a) Said Act is a violation of Article I, Section X, paragraph 1 of the Constitution of the United States, which provides that "No State shall * * * pass any law impairing the obligations of contracts, * * *," and is also a violation of Article IV, Section VII, paragraph 3 of the Constitution of the State of New Jersey, which pro- [fols. 25-29] vides that "The legislature shall not pass any * * * law impairing the obligation of contracts."

(b) Because said statute is a violation of Section I of the XIV Amendment to the Constitution of the United States, which provides that "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of * * * property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws."

(c) Said act is a violation of Section 1, Article I of the Constitution of the State of New Jersey, which provides that "all men are by nature free and independent and have certain natural and inalienable rights, among which are those of enjoying and defending life and liberty, acquiring, possessing and protecting property, and of pursuing and obtaining safety and happiness."

Charles C. Pilgrim, Attorney for Plaintiff-Appellant.

Due service of a copy of the within notice of appeal and grounds is hereby acknowledged this 21st day of December, 1928.

Lum, Tamblyn & Colyer, Attys. for Defendant.

[fols. 30 & 31] In Court of Errors and Appeals of New Jersey, February Term, 1929

O'Gorman and Young, Inc., a Corporation of the State of New Jersey, Plaintiff-Appellant,

vs.

Hartford Fire Insurance Company of Hartford, Connecticut, a Corporation of the State of Connecticut, Defendant-Respondent

On Appeal from Essex County Circuit Court

Judgment—Filed July 25, 1929

This cause having been duly argued at the February 1929 term of this court by Charles C. Pilgrim, Esquire, of counsel for the plaintiff-appellant, and Ralph E. Lum, Esquire, of counsel for the defendant-respondent, and the court having considered the same, and finding no error in the record or proceeding in the Essex County Circuit Court,

It is thereupon ordered and adjudged that the judgment of the Essex County Circuit Court in this cause be affirmed with costs, and that the record be remitted to the Essex County Circuit Court to be proceeded with in accordance with this judgment and the practice of said court.

On motion of

Lum, Tamblyn & Colyer, Attorneys for Defendant-Respondent.

[File endorsement omitted.]

[fol. 32] In Court of Errors and Appeals of New Jersey, October Term, 1929

O'Gorman and Young, Inc., a Corporation of the State of New Jersey, Appellant,

against

Hartford Fire Insurance Company of Hartford, Connecticut, a Corporation of the State of Connecticut, Respondent

Petition for Appeal, Statement, Assignment of Errors, and Prayer for Reversal—Filed Oct. 16, 1929

Petition for Appeal

Considering itself aggrieved by the final decision of the Court of Errors and Appeals of the State of New Jersey in the above entitled cause, the appellant therein, O'Gorman and Young, Inc., a corporation of the State of New Jersey, hereby prays that an appeal be allowed to the Supreme Court of the United States herein, and for an order fixing the amount of the bond thereon.

Statement

The case is one in which the validity of a statute of the State of New Jersey, to wit, Chapter 128 of the laws of 1928 entitled "An Act to Amend An Act, entitled A Further Supplement to an Act, entitled an Act to provide for the Regulation and Incorporation of Insurance Companies and Regulate the Transaction of Insurance Business in this State", which statute was approved March 29, 1928, is drawn in question upon the ground that said statute is repugnant to paragraph 1 of Section 10 of Article I of the Constitution of the United States and also repugnant to Section 1 of the 14th Amendment to the Constitution of the United States.

[fol. 33] The final decision of the Court of Errors and Appeals in the last resort in all causes in the State of New Jersey in which a decision could be had, is in favor of the validity of said statute. Therefore, in accordance with the rules of the Supreme Court of the United States (Rule

46, Paragraph 2), the petitioner respectfully shows this Court that the case is one in which under the legislation in force when the Act of January 31, 1928 (45 Stat. L. 54) was passed, to wit, under Section 237 (a) of the Judicial Code (28 U. S. C. A. Section 344) a review could be had in the Supreme Court of the United States on writ of error as a matter of right.

The said Court of Errors and Appeals in the last resort and all causes in the State of New Jersey rendered its decision herein on May 20, 1929, and in a per curiam opinion affirmed the judgment in Essex County Circuit Court upon the grounds set forth in the opinion theretofore rendered by the Hon. Nelson Y. Dungan, judge of the Circuit Court of Essex County. The opinion of the said Court of Errors and Appeals in the last resort in all causes in the State of New Jersey has not yet been officially reported but is unofficially reported in O'Gormon & Young, Inc. v. Hartford Fire Insurance Co. of Hartford, 146 Atlantic Reporter 370. The order of affirmance by the New Jersey Court of Errors and Appeals and the remittitur was entered in the office of the Clerk of said Court on July 25, 1929.

[fol. 34] ASSIGNMENT OF ERRORS

Now comes the appellant above named and files herewith its petition for an appeal and says that there are errors in the records and proceedings of the above entitled case and for the purpose of having the same reviewed in the United States Supreme Court, makes the following assignment:

First. Said New Jersey Court of Errors and Appeals erred in giving judgment affirming the judgment of the Essex County Circuit Court, holding Chapter 128 of the Laws of the State of New Jersey 1928 entitled "An Act to Amend an Act entitled A Further Supplement to an Act entitled An Act to Provide for the Regulation and Incorporation of Insurance Companies and to Regulate the Transaction of Insurance Business in this State" to be a constitutional act.

Second. Said New Jersey Court of Errors and Appeals erred in failing to render judgment in favor of said appellant.

Third. Said New Jersey Court of Errors and Appeals erred in failing to hold that Chapter 128 of the Laws of New Jersey 1928 aforesaid, impaired the obligation of an existing contract between the Appellant and the Appellee in violation of Paragraph 1 of Section X of Article I of the Constitution of the United States.

Fourth. Said New Jersey Court of Errors and Appeals erred in failing to hold that Chapter 128 of the Laws of New Jersey 1928 aforesaid deprived the appellant of its liberty without due process of law in violation of Section 1 of the 14th amendment to the Constitution of the United [fol. 35] States.

Fifth. Said New Jersey Court of Errors and Appeals erred in failing to hold that Chapter 128 of the Laws of New Jersey 1928 aforesaid deprived the appellant of its property without due process of law in violation of Section 1 of the 14th amendment to the Constitution of the United States.

Sixth. Said New Jersey Court of Errors and Appeals erred in failing to hold that Chapter 128 of the Laws of New Jersey 1928 aforesaid denies to the appellant the equal protection of the laws in violation of Section 1 of the 14th amendment to the Constitution of the United States.

Seventh. Said New Jersey Court of Errors and Appeals erred in failing to hold that Chapter 128 of the Laws of New Jersey 1928 in so far as it declares it to be unlawful for an insurer against hazards by fire to pay to any one of its local agents in New Jersey a commission of compensation in excess of that paid to any other of its local agents in said State, unlawfully discriminates against the appellant and thereby denies to the appellant the equal protection of the laws and deprives the appellant of its property without due process of law in violation of Section 1 of the 14th Amendment to the Constitution of the United States.

Eighth. Said New Jersey Court of Errors and Appeals erred in failing to hold that Chapter 128 of the Laws of New Jersey 1928 aforesaid, insofar as it applies only to local agents of insurers against hazards by fire in the State [fol. 36] of New Jersey, unlawfully discriminates against the appellant and therefore denies the appellant the equal

protection of the laws and deprives the appellant of its property without due process of law in violation of Section 1 of the 14th amendment to the Constitution of the United States.

Ninth. Said New Jersey Court of Errors and Appeals erred in holding that the amount of commission or compensation paid to local agents of insurers against fire in the State of New Jersey is a proper subject for regulation under the police power of said State and that Chapter 128 of the Laws of New Jersey 1928 aforesaid is a proper exercise of that power.

Tenth. Said New Jersey Court of Errors and Appeals erred in failing and refusing to render judgment in favor of the appellant on the ground that Chapter 128 of the Laws of New Jersey 1928 aforesaid is unconstitutional and void for the following reasons: (1) Said statute insofar as it purports to fix, determine, limit, restrict or regulate the commissions to be paid by fire insurance companies to agents for soliciting and obtaining fire insurance contracts and polocies, deprives the appellant of its liberty and property without due process of law by unreasonably and unduly interfering with the conduct of a lawful business, to wit, the business of an insurance agency. (2) Said statute in the respects mentioned in the foregoing subdivision denies to the appellant the equal protection of the laws of the State of New Jersey since it unduly and unreasonably interferes with the right of the appellant to acquire, possess and protect property as provided in Article 1, Section 1 of [fol. 37] the Constitution of the State of New Jersey.

Prayer for Reversal

For which errors the appellant, O'Gorman and Young, Inc., prays that the said judgment of the Court of Errors and Appeals of the State of New Jersey, dated the 25th day of July, 1929, in the above entitled cause, be reviewed by the Supreme Court of the United States, and reversed, and a judgment rendered in favor of the appellant, and for costs.

Walter Gordon Merritt, McCarter and English, Attorneys for and of Counsel for Appellant.

The prayer of the above petition is denied Oct. 16, 1929.
J. R. Walker, Chancellor and President Judge of the Court of Errors and Appeals in the Last Resort in All causes in New Jersey.

[fol. 37½] [File endorsement omitted.]

[fol. 38] In Court of Errors and Appeals of New Jersey

O'Gorman and Young, Inc., a Corporation of the State of New Jersey, Appellant,

against

Hartford Fire Insurance Company of Hartford, Connecticut, a Corporation of the State of Connecticut, Respondent

Order Allowing Appeal

The appellant in the above entitled suit, having prayed for the allowance of an appeal in this cause to the Supreme Court of the United States from the judgment made and entered in the above entitled suit in the Court of Errors and Appeals of the State of New Jersey on the 25th day of July, 1929, and from each and every part thereof, and having presented and filed its petition for appeal, assignment of errors, and prayer for reversal, pursuant to the statutes and the rules of the Supreme Court of the United States in such case made and provided:

It is now here ordered that an appeal be, and the same is hereby, allowed to the Supreme Court of the United States from the Court of Errors and Appeals of the State of New Jersey in the above entitled cause, as provided by law, and it is further ordered that the Clerk of the Court of Errors and Appeals of the State of New Jersey shall prepare and certify a transcript of the record, proceedings and judgment in this cause and transmit the same to the Supreme Court of the United States, so that he shall have the same in said Court within thirty (30) days of this date. [fol. 39-3] And it is further ordered that security for

costs on appeal be fixed in the sum of Five Hundred dollars ($500.00).

Dated October 18th, 1929.

Louis D. Brandeis, Associate Justice, Supreme Court of the United States.

[fol. 4] IN CIRCUIT COURT OF ESSEX COUNTY

On Contract

O'GORMAN AND YOUNG, INC., a Corporation of the State of New Jersey, Plaintiff

vs.

PHŒNIX ASSURANCE COMPANY, LTD., OF LONDON, a Corporation of Great Britain, Defendant

COMPLAINT

Plaintiff, a corporation of the State of New Jersey, having its principal place of business at Number 15 Clinton Street, Newark, Essex County, New Jersey, says that:

1. Plaintiff is a regularly licensed insurance broker under the laws of the State of New Jersey, and has been both prior to and since March 29, 1928, and now is, and has been for many years last past, a duly commissioned agent of the defendant, Phœnix Assurance Company, Ltd., of London, a corporation of Great Britain, which is engaged in the business of fire insurance throughout the United States, and duly authorized by the Commissioner of Banking and Insurance to transact the business of fire insurance in the State of New Jersey.

2. Plaintiff has had for many years a legal and subsisting employment contract with defendant to act as its agent in the State of New Jersey for the purpose of negotiating [fol. 5] and selling policies of fire insurance to be issued by defendant to persons and upon property located in said State, and especially in the City of Newark and County of Essex, upon stated rates of commission, which contract was on March 29, 1928 in full force and effect and unrevoked.

3. Since March 29, 1928 plaintiff has negotiated divers fire insurance contracts between defendant and persons

residing in, and upon property located in the said County of Essex, which contracts have been accepted by defendant and policies duly issued and delivered therefor; that the rate of commission on said policies or contracts of insurance contracted to be paid to plaintiff by the defendant under its said contract in existence on March 29, 1928 was twenty-five per centum on each premium charged; that since March 29, 1928 plaintiff has through its efforts produced premiums on such fire insurance contracts or policies on behalf of the defendant in the aggregate amount of $4,111.67; that the total commissions earned by plaintiff in negotiating such contracts or policies of fire insurance on behalf of the defendant at the rate of twenty-five per centum, pursuant to said contract of agency and compensation, amounts to the sum of $1,027.92; that defendant, notwithstanding its said contract with plaintiff, and without revoking the same, has refused, and still does refuse, to pay plaintiff a commission on said premiums at said rate of twenty-five per centum, but has paid plaintiff commissions thereon at the rate of twenty per centum, or the [fol. 6] sum of $822.34, and the defendant still owes the plaintiff balance of commission for acting as its said agent as aforesaid, in accordance with its said contract, in the sum of of $205.58, said sum representing the difference between commissions earned by plaintiff on said aggregate of premiums at the rate of twenty-five per centum and commissions paid by defendant to the plaintiff on the aggregate of said premiums at the rate of twenty per centum.

4. By reason of the refusal of the defendant to perform its said agreement with plaintiff for the payment of said commissions on premiums for such fire insurance contracts negotiated by plaintiff for defendant, at the said rate of twenty-five per centum, and the refusal of the defendant to observe its said employment contract since March 29, 1928, plaintiff has been greatly damaged and suffered great loss, not only because of diminution of income from the business of negotiating said contracts or policies of insurance for defendant, but because it has been put to great expense and loss in the conduct of its said business of fire insurance agency in the City of Newark, County of Essex and State of New Jersey.

5. Plaintiff attaches hereto a tabulation, forming part hereof marked "Schedule A," to which reference is hereby made, which tabulation shows numbers of policies or contracts of insurance negotiated and written by it on behalf of defendant, together with the premiums paid therefor, and the amount of commissions paid by plaintiff to defendant at the rate of twenty per centum, and the amount [fol. 7] of commission earned by plaintiff at the rate of twenty-five per centum, pursuant to its said contract.

Plaintiff, therefore, demands damages from the defendant in the sum of one thousand dollars ($1,000.00).

Pilgrim & Ritger, Attorneys for Plaintiff.

[fol. 8] SCHEDULE A TO COMPLAINT

Policy numbers	Premiums	Commissions	
		Paid 20%	Earned 25%
1,405,411	$20.00	$4 00	$5 00
1,405,421	69 42	13 88	17 36
1,405,427	39 75	7 95	9 94
1,405,439	16.60	3 32	4 15
1,405,440	9 75	1 95	2 44
1,405,448	30 00	6 00	7.50
1,405,461	12 00	2 40	3 00
1,405,474	60 00	12 00	15 00
1,405,504	19 50	3 90	4 88
1,405,511	19 65	3 93	4.91
1,405,512	35 58	7 12	8 90
1,405,515	7.00	1 40	1 75
1,405,518	105 50	21 10	26 37
1,405,525	5 25	1 05	1 31
1,405,526	103 60	20 72	25 90
1,405,544	4.80	96	1 20
1,405,549	8.00	1 60	2 00
1,405,556	13 66	2 73	3.42
1,405,560	31 50	6 30	7 88
1,405,563	7 50	1 50	1 88
1,405,564	47 80	9 56	11 95
1,405,570	121 80	24 36	30.45

Policy numbers	Premiums	Commission Paid 20%	Commission Earned 25%
1,405,575	72 40	14 48	18 10
1,405,588	178.00	35 60	44 50
1,405,589	204 75	40 95	51 18
1,405,590	129 86	25 97	32 46
1,405,593	95 08	19 02	23 77
1,405,595	1,221.78	244 36	305 44
1,405,596	151 30	30 26	37 83
[fol. 9]			
1,405,602	47 12	9 42	11.78
1,405,622	20 00	4 00	5 00
1,405,633	1,101 24	220 25	275 30
1,405,634	81 68	16 34	20 42
1,405,640	2 97	59	.74
1,405,641	2 00	40	50
1,405,642	14.85	2 97	3 71
	$4,111 69	$822 34	$1,027 92

Due and legal service of the within Summons and Complaint is hereby acknowledged this 29th day of October, 1928.

Lum, Tamblyn & Colyer, Attorneys for Defendant.

[fol. 10] In Circuit Court of Essex County

O'Gorman and Young, Inc., a Corporation of the State of New Jersey, Plaintiff,

vs.

Phoenix Assurance Company, Ltd., of London, a Corporation of Great Britain, Defendant

Answer—Filed October 31, 1928

Defendant, a corporation organized under the laws of Great Britain and authorized to do business in the State of New Jersey, answering the complaint herein, says:

1. Paragraph 1 is admitted.

2. Paragraph 2 is admitted.

3. Defendant denies that it owes the plaintiff the sum of $205.58 as in said complaint alleged, for the reasons hereinafter in this answer set forth. Defendant admits all other allegations in paragraph 3.

4. Paragraph 4 is denied.

5. Paragraph 5 is admitted.

First Separate Defense

1. Pursuant to an act of the legislature of the State of New Jersey entitled "An Act to amend an act entitled 'A further supplement to an act entitled "An Act to provide for the regulation and incorporation of insurance companies and to regulate the transaction of insurance busi- [fol. 11] ness in this State," approved April third, one thousand nine hundred and two,' which said supplement was approved March eighteenth, one thousand nine hundred and thirteen," which said amendatory act was approved March 29, 1928, and being known as Chapter 128 of the laws of 1928, it is in and by the first section thereof among other things provided as follows:

"In order that rates for insurance against the hazards of fire shall be reasonable it shall be unlawful for any such insurer licensed in this State to directly or indirectly pay or allow, or offer or agree to allow, any commission or other compensation or anything of value, in excess of a reasonable amount, to any person for acting as its agent in respect to any class of such insurance nor to directly or indirectly pay or allow, or offer or agree to allow, any commission or other compensation or anything of value, to any person for acting as its local agent in respect to any class of such insurance, in excess of that offered, paid or allowed to any one of its local agents on such risks in this State."

And in and by the second paragraph of the said act it was provided as follows:

"Any insurer, agent, expert, person or corporation violating any of the provisions of this act shall be subject to a

penalty for five hundred dollars for each and every violation to be sued for and recovered by the Commissioner of Banking and Insurance, or by any citizen of this State and paid to the State Treasurer. In case any insurer is con-[fol. 12] victed of a violation of this act, every local agent of the insurer in this State shall be entitled to the same commission or compensation, or other thing of value, for business done for the insurer during the calendar year in which the discrimination took place, on risks in this State, and any local agent may recover from the insurer in any court of competent jurisdiction, the amount of such excess commission or compensation, or other thing of value, if any, to which he may become entitled under the provision of this act."

And in and by the third paragraph of said act it was provided that the same shall take effect immediately.

On and subsequently to March 29, 1928, this defendant had and now has several persons acting as its local agents duly authorized to represent it in writing fire insurance in the State of New Jersey; that the commissions allowed by this defendant to its said several agents so acting as aforesaid in respect to the class of insurance mentioned in the said complaint was, on said last mentioned day and from thence hitherto and now is, twenty per centum on each premium charged; that pursuant to the terms of the said statute it became and was unlawful on and after March 29, 1928, to pay to the plaintiff herein the commission of twenty-five per centum of the premium charged, theretofore paid by this defendant to the said plaintiff.

Lum, Tamblyn & Colyer, Attorneys for Defendant.

[fol. 13] In Circuit Court of Essex County

O'Gorman and Young, Inc., a Corporation of the State of New Jersey, Plaintiff,

vs.

Phœnix Assurance Company, Ltd., of London, a Corporation of Great Britain, Defendant

Notice of Motion to Strike Out Answer—Filed November 10, 1928

To Messrs. Lum, Tamblyn and Colyer, attorneys for defendant, Phœnix Assurance Company, Ltd., of London:

Please take notice that on Friday, November 9, 1928, at the hour of two o'clock P. M. of that day at the Court House in the City of Newark, we shall apply to the Essex County Circuit Court (Hon. Nelson Y. Dungan, Judge) for an order striking out the answer of the defendant filed herein, upon the following grounds:

First. That said answer does not set up a just, legal or valid cause of action, because:

1. The act of the legislature of the State of New Jersey described and set forth in the "First separate defense" of said answer is null and void for the following reasons:

(a) Said act is a violation of Article I, Section X, Paragraph 1 of the Constitution of the United States, which provides that "No State shall * * * pass any law impairing the obligations of contracts, * * *," and is also a violation of Article IV, Section VII, Paragraph 3 of the [fol. 14] Constitution of the State of New Jersey, which provides that "The legislature shall not pass any * * * law impairing the obligation of contracts."

(b) Because said statute is a violation of Section 1, of the XIV Amendment to the Constitution of the United States, which provides that "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of * * * property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws."

Second. Because said answer is in divers other respects illegal, insufficient, and objectionable in point of law.

Dated Newark, New Jersey, November 2, 1928.

Respectfully, Pilgrim & Ritger, Attorneys of Plaintiff.

[fol. 15] In Circuit Court of Essex County

O'Gorman and Young, Inc., a Corporation of the State of New Jersey, Plaintiff,

vs.

Phoenix Assurance Company, Ltd., of London, a Corporation of Great Britain, Defendant

Additional Ground on Motion to Strike—Filed November 20, 1928

To Messrs. Lum, Tamblyn & Colyer, attorneys for defendant, Phoenix Assurance Company, Ltd., of London:

Please take notice that we shall on application to the Essex County Circuit Court for an order striking out the answer of the defendant filed herein, urge the additional ground:

(e) Said act is a violation of Section I, Article I of the Constitution of the State of New Jersey which provides that "all men are by nature free and independent and have certain natural and inalienable rights, among which are those of enjoying and defending life and liberty, acquiring, possessing and protecting property, and of pursuing and obtaining safety and happiness."

Dated Newark, New Jersey, November 16, 1928.

Respectfully, Pilgrim & Ritger, Attorneys of Plaintiff.

Due and legal service of the within Additional Ground is hereby acknowledged this 17th day of November 1928.

Lum, Tamblyn & Colyer, Attorneys for Defendant.

[fol. 16] In Circuit Court of Essex County

O'Gorman and Young, Inc., a Corporation of the State of New Jersey, Plaintiff,

vs.

Phoenix Assurance Company, Ltd., of London, a Corporation of Great Britain, Defendant

Order Denying Motion to Strike Out Answer and for Judgment—Filed December 19, 1928

This cause coming on to be heard before the Court upon the application of the plaintiff herein to strike out the answer filed by the defendant and the arguments of the counsel for the plaintiff and of the defendant having been heard and the Court having duly considered the same:

It is thereupon ordered that the said application of the plaintiff to strike out the answer of the defendant filed herein be and the same is hereby denied.

And the said defendant having admitted by its attorney in open court that it cannot deny the truth of the material allegations of fact set forth in the answer of the said defendant that a commission of 20% is paid by the defendant to certain of its agents in the State of New Jersey.

It is further ordered that judgment final be entered herein in favor of the defendant and against the plaintiff and that the said defendant recover its costs in this action to be taxed.

[fol. 17] On motion of:

Lum, Tamblyn & Colyer, Attorneys for Defendant.

Let the above rule be entered.

Nelson Y. Dungan, Circuit Court Judge.

[fol. 18] IN CIRCUIT COURT OF ESSEX COUNTY

O'GORMAN AND YOUNG, INC., a Corporation of the State of New Jersey, Plaintiff,

vs.

HARTFORD FIRE INSURANCE COMPANY OF HARTFORD, CONNECTICUT, a Corporation of the State of Connecticut, Defendant

O'GORMAN AND YOUNG, INC., a Corporation of the State of New Jersey, Plaintiff,

vs.

PHŒNIX ASSURANCE COMPANY, LTD., OF LONDON, a Corporation of Great Britain, Defendant

Pilgrim & Ritger, attorneys for plaintiff; argued by Mr. Charles C. Pilgrim.

Lum, Tamblyn & Colyer, attorneys for defendants; argued by Mr. Ralph E. Lum.

DECISION ON MOTION TO STRIKE OUT ANSWERS

DUNGAN, C. C. J.:

Separate suits were instituted by the plaintiff against the Hartford Fire Insurance Company of Hartford, Connecticut, hereinafter designated as Hartford, and against the Phoenix Assurance Company, Ltd., of London, hereinafter designated as Phoenix, to recover a balance of commissions due to it as agent for those respective fire insurance companies.

[fol. 19] There was a contract between the plaintiff and Hartford at a stated commission which was renewed March 29th, 1928, with an agreement to pay to the plaintiff a reasonable sum for its agency efforts, which reasonable sum was fixed at twenty-five per cent.

On that date (March 29, 1928) there was a subsisting contract between the plaintiff and Phœnix, then in full force and effect, to act as its agent, which theretofore, under the agreement, had borne compensation at the rate of twenty-five per cent.

By an act of the Legislature of the State of New Jersey, approved on that date (March 29, 1928), and which took effect immediately, it was provided that it should be unlawful for insurers against hazards by fire to pay or allow any commissions or compensation in excess of a reasonable amount to any of its agents, nor to pay or allow to any local agent any commissions or compensation in excess of that paid or allowed to any one of its local agents in this State.

Plaintiff was a local agent in the City of Newark, and it appears that the rate of commissions paid to one or more of the local agents of the defendants in this State was twenty per cent.

Both defendants, therefore, paid to the plaintiff twenty per cent. commissions on business done by it for them after March 29, 1928, and refused to pay the additional five per cent. which, before that date, they had paid to it. Thereupon plaintiff brought these suits against them to recover [fol. 20] the additional amount, claiming that twenty-five per cent. was a reasonable compensation for the agency services.

The defendants by their answers admit the material allegations in the complaint, but plead as a defense the act of March 29, 1928.

A motion is now made on behalf of the plaintiff to strike out these answers on the ground that the act is not applicable to the contracts in controversy, as contravening the 14th Amendment of the Federal Constitution which provides that no state shall deprive any person of property without due process of law, and as a violation of the United States and New Jersey Constitutions which prohibit the passage of any law impairing the obligation of contracts.

As to the contention that the constitutional provisions relating to the impairment of contracts is violated by the Legislative enactment in question, it may be noted that the Hartford contract with the plaintiff apparently expired on the very day the 1928 law became effective, and was renewed on that date, so it must be assumed that the renewal contract was made within that law. As to the contract with Phœnix, it appears that there was a contract in force at that time but no statement appears as to when it terminate-, except the statement that the defendant refused, after that

date, to pay more than twenty per cent. "and without revoking the contract," from which it may be assumed that by refusing to pay more than twenty per cent. "after that date," notice was given to the plaintiff of the amount of [fol. 21] the obligation under the contract which the defendant recognized, and which amount the plaintiff received up to the commencement of this suit, but there is no proof or agreed fact that the plaintiff is receiving that amount accepted it in full satisfaction for its commissions under the contract, and it may be, if there was no change in this contract, either express or implied, the Legislature is without power under these constitutional provisions to change it until its expiration, in which event, however, it may become liable to the further provision of the 1928 statute which provides that "In case any insurer is convicted of a violation of this act, every local agent of the insurer in this state shall be entitled to the same commission or compensation * * *, and any local agent may recover from the insurer * * * the amount of such commissions or compensation * * * to which he may become entitled under this act." The question if implied waiver is usually one for the jury, and if that be a proper one to be considered in this case, the answer should not be stricken out upon the ground of the impairment of the obligation of the contract, even though there was no express agreement on the part of the plaintiff to change its terms, but a jury should determine whether there had been such implied waiver and, if so, when it had taken place, and find a verdict accordingly.

The other question is whether or not the act deprives the plaintiff of its property without due process of law, and therefore is a violation of the 14th Amendment to the Federal Constitution.

Federal and State laws are in favor of the regulation of the business affairs of persons and corporations which af- [fol. 22] fect the public interest and there are federal and state decisions in almost every state in this country upholding the constitutionality of such laws, provided they are reasonable. Of course, the mere statement in the law itself as to the reasonableness of its provisions, does not make them so, but that is a question to be decided sometimes by the Court and sometimes by a jury. Whether or not the business of a fire insurance company is affected with a pub-

lic interest is not an open question in this state. In McCarter, Attorney General, v. Fireman's Ins. Co., 74 Eq., p. 372 at p. 383, our Court of Errors and Appeals said, "The business of the defendants (insurance companies) is in point of fact one that directly affects the interests of the public, and such public interest has been recognized as a subsisting one by the Legislature of this State, and that in point of law, the business of the defendants is affected with a public interest."

If the regulations prescribed are reasonable, they are valid. Our statute provides that the rates for fire insurance "shall be reasonable." Since the commissions paid to local agents naturally enter into the cost of such insurance to the public, and therefore influence the rates which must be charged to the public for such insurance, it is within the police power of the State to require that the commissions must be reasonable, otherwise such large commissions might be allowed as to impair the financial sta- [fol. 23] bility of the insurance companies, and thus imperil their ability to meet their financial obligations to their policy holders.

Since twenty per cent is the amount of commissions paid to some of its local agents, the effect of this legislation is to determine that a commission in excess of that is unreasonable. The presumption is in favor of the reasonableness of the law until the contrary is made to appear.

In the facts or arguments, there is nothing to overcome that presumption, and therefore the answers should not be stricken out as an unlawful deprivation of the plaintiff of his property without due process of law.

The motion in both cases to strike out the answers of the defendants will be denied.

Nelson Y. Dungan, Circuit Court Judge.

[fol. 24] In Circuit Court of Essex County

O'Gorman and Young, Inc., a Corporation of the State of New Jersey, Plaintiff,

vs.

Phœnix Assurance Company, Ltd., of London, a Corporation of Great Britain, Defendant

Notice of Appeal and Grounds—Filed December 26, 1928

To Messrs. Lum, Tamblyn & Colyer, attorneys for defendant:

Take notice that the plaintiff herein appeals to the Court of Errors and Appeals from the order denying the application of the plaintiff to strike out the answer of the defendant and from the whole of the judgment entered in this cause on the following grounds:

1. Because the Act of the Legislature of the State of New Jersey mentioned and set forth in the "First Separate Defense" of the answer of the defendant is null and void for the following reasons:

(a) Said Act is a violation of Article I, Section X, paragraph 1 of the Constitution of the United States, which provides that "No State shall * * * pass any law impairing the obligations of contracts, * * *," and is also a violation of Article IV, Section VII, paragraph 3 of the Constitution of the State of New Jersey, which provides that "The legislature shall not pass any * * * law impairing the obligation of contracts."

[fols. 25 & 26] (b) Because said statute is a violation of Section I, of the XIV Amendment to the Constitution of the United States, which provides that "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of * * * property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws."

(c) Said Act is a violation of Section I, Article I of the Constitution of the State of New Jersey, which provides that "all men are by nature free and independent and have

certain natural and inalienable rights, among which are those of enjoying and defending life and liberty, acquiring, possessing and protecting property, and of pursuing and obtaining safety and happiness."

Charles C. Pilgrim, Attorney for Plaintiff-Appellant.

Due service of a copy of the within Notice of Appeal and Grounds is hereby acknowledged this 21st day of December, 1928.

Lum, Tamblyn & Colver, Attys. for Defendant.

[fol. 27] In Court of Errors and Appeals of New Jersey

O'Gorman and Young, Inc., a Corporation of the State of New Jersey, Appellant,

against

Phoenix Assurance Company, Ltd., of London, a Corporation of Great Britain, Respondent

Appeal from Circuit Court, Essex County

Opinion

Actions by O'Gorman & Young, Inc., against the Phœnix Assurance Company, Limited, of London, England and the Hartford Fire insurance Company of Hartford, Conn. Plaintiff's motion to strike the answers was denied, and plaintiff appeals. Affirmed.

This was an action at law in the Essex Circuit Court for damages for breach of a contract for negotiating and selling policies of fire insurance. Motion was made before Hon. Nelson Y. Dungan, circuit court judge, to strike out the answers filed by the defendants, for the alleged reason that they did not set up a legal defense. At the conclusion of the argument, the judge declined to strike the answers, delivering the following opinion.

Per Curiam:

The judgment under review herein should be affirmed for the reasons expressed in the opinion by Judge Dungan in the circuit Court.

[fol. 28] In Court of Errors and Appeals of New Jersey, February Term, 1929

O'Gorman and Young, Inc., Appellant,

and

Phœnix Assurance Company, Ltd., of London, England, Respondent

Appeal from Essex Circuit Court

No. 112 of February Term, 1929.
Date: May 20th, 1929.
The Chancellor presiding.
Opinion per Curiam.

Check List

	Affirm	Reverse	Modify
The Chancellor	1		
" Chief Justice	1		
Mr. Justice Trenchard	1		
" " Parker	1		
" " Kalisch	1		
" " Black	1		
" " Campbell		1	
" " Lloyd		1	
" " Case		1	
" " Bodine			

[fol. 29]

Judge Van Buskirk		1	
" McGlennon	1		
" Kays	1		
" Hetfield		1	
" Dear		1	
Totals	8	6	

[fols. 30 & 31] In Court of Errors and Appeals of New Jersey

O'Gorman and Young, Inc., a Corporation of the State of New Jersey, Plaintiff-Appellant,

vs.

Phœnix Assurance Company, Ltd., of London, a Corporation of Great Britain, Defendant-Respondent

On Appeal from Essex County Circuit Court

Judgment—Filed July 25, 1929

This cause having been duly argued at the February 1929 term of this court by Charles C. Pilgrim, Esquire, of counsel for the plaintiff-appellant, and Ralph E. Lum, Esquire, of counsel for the defendant-respondent, and the court having considered the same, and finding no error in the record or proceeding in the Essex County Circuit Court,

It is thereupon ordered and adjudged that the judgment of the Essex County Circuit Court in this cause be affirmed with costs, and that the record be remitted to the Essex County Circuit Court to be proceeded with in accordance with this judgment and the practice of said court.

On motion of:

Lum, Tamblyn & Colyer, Attorneys for Defendant-Respondent.

[File endorsement omitted.]

[fol. 32] In Court of Errors and Appeals of New Jersey

O'Gorman and Young, Inc., a Corporation of the State of New Jersey, Appellant,

against

Phœnix Assurance Company of London, a Corporation of Great Britain, Respondent

Petition For Appeal, Statement, Assignment of Errors, and Prayer for Reversal—Filed Oct. 16, 1929

Petition for Appeal

Considering itself aggrieved by the final decision of the Court of Errors and Appeals of the State of New Jersey

in the above entitled cause, the appellant therein, O'Gorman and Young, Inc., a corporation of the State of New Jersey, hereby prays that an appeal be allowed to the Supreme Court of the United States herein, and for an order fixing the amount of the bond thereon.

Statement

The case is one in which the validity of a statute of the State of New Jersey, to wit, Chapter 128 of the laws of 1928 entitled "An Act to Amend An Act, entitled A Further Supplement to an Act, entitled an Act to Provide for the Regulation and Incorporation of Insurance Companies and Regulate the Transaction of Insurance Business in this State," which statute was approved March 29, 1928, is drawn in question upon the ground that said statute is repugnant to paragraph 1 of Section 10 of [fol. 33] Article I of the Constitution of the United States and also repugnant to Section 1 of the 14th Amendment to the Constitution of the United States. The final decision of the Court of Errors and Appeals in the last resort in all causes in the State of New Jersey in which a decision could be had, is in favor of the validity of said statute. Therefore, in accordance with the rules of the Supreme Court of the United States (Rule 46, Paragraph 2), the petitioner respectfully shows this court that the case is one in which under the legislation in force when the Act of January 31, 1928 (45 Stat. L. 54) was passed, to wit, under Section 237 (a) of the Judicial Code (28 U. S. C. A. Section 344) a review could be had in the Supreme Court of the United States on writ of error as a matter of right.

The said Court of Errors and Appeals in the last resort and all causes in the State of New Jersey rendered its decision herein on May 20, 1929, and in a per curiam opinion affirmed the judgment in Essex County Circuit Court upon the grounds set forth in the opinion theretofore rendered by the Hon. Nelson Y. Dungan, judge of the Circuit Court of Essex County. The opinion of the said Court of Errors and Appeals in the last resort in all causes in the State of New Jersey has not yet been officially reported but is unofficially reported in O'Gorman & Young, Inc. v. Phœnix Assurance Company of London, 146 Atlantic

Reporter 370. The order of affirmance by the New Jersey Court of Errors and Appeals and the remittitur was entered in the office of the Clerk of said Court on July 25, 1929.

[fol. 34] ASSIGNMENT OF ERRORS

Now comes the appellant above named and files herewith its petition for an appeal and says that there are errors in the records and proceedings of the above entitled case and for the purpose of having the same reviewed in the United States Supreme Court, makes the following assignment:

First. Said New Jersey Court of Errors and Appeals erred in giving judgment affirming the judgment of the Essex County Circuit Court, holding Chapter 128 of the Laws of the State of New Jersey 1928 entitled "An Act to Amend an Act entitled A Further Supplement to an Act entitled An Act to Provide for the Regulation and Incorporation of Insurance Companies and to Regulate the Transaction of Insurance Business in this State" to be a constitutional act.

Second. Said New Jersey Court of Errors and Appeals erred in failing to render judgment in favor of said appellant.

Third. Said New Jersey Court of Errors and Appeals erred in failing to hold that Chapter 128 of the Laws of New Jersey 1928 aforesaid, impaired the obligation of an existing contract between the appellant and the appellee in violation of Paragraph 1 of Section X of Article I of the Constitution of the United States.

Fourth. Said New Jersey Court of Errors and Appeals erred in failing to hold that Chapter 128 of the Laws of New Jersey 1928 aforesaid deprived the appellant of its liberty without due process of law in violation of Section 1 of the 14th amendment to the Constitution of the United [fol. 35] States.

Fifth. Said New Jersey Court of Errors and Appeals erred in failing to hold that Chapter 128 of the Laws of New Jersey 1928 aforesaid deprived the appellant of its property without due process of law in violation of Sec-

tion 1 of the 14th amendment to the Constitution of the United States.

Sixth. Said New Jersey Court of Errors and Appeals erred in failing to hold that Chapter 128 of the Laws of New Jersey 1928 aforesaid denies to the appellant the equal protection of the laws in violation of Section 1 of the 14th amendment to the Constitution of the United States.

Seventh. Said New Jersey Court of Errors and Appeals erred in failing to hold that Chapter 128 of the Laws of New Jersey 1928 insofar as it declares it to be unlawful for an insurer against hazards by fire to pay to any one of its local agents in New Jersey a commission or compensation in excess of that paid to any other of its local agents in said State, unlawfully discriminates against the appellant and thereby denies to the appellant the equal protection of the laws and deprives the appellant of its property without due process of law in violation of Section 1 of the 14th Amendment to the Constitution of the United States.

Eighth. Said New Jersey Court of Errors and Appeals erred in failing to hold that Chapter 128 of the Laws of New Jersey 1928 aforesaid, insofar as it applies only to local agents of insurers against hazards by fire in the State of New Jersey, unlawfully discriminates against the [fol. 36] appellant and therefore denies the appellant the equal protection of the laws and deprives the appellant of its property without due process of law in violation of Section 1 of the 14th amendment to the Constitution of the United States.

Ninth. Said New Jersey Court of Errors and Appeals erred in holding that the amount of commission or compensation paid to local agents of insurers against fire in the State of New Jersey is a proper subject for regulation under the police power of said State and that Chapter 128 of the Laws of New Jersey 1928 aforesaid is a proper exercise of that power.

Tenth. Said New Jersey Court of Errors and Appeals erred in failing and refusing to render judgment in favor of the appellant on the ground that Chapter 128 of the Laws of New Jersey 1928 aforesaid is unconstitutional and void for the following reasons: (1) Said statute insofar as it purports to fix, determine, limit, restrict or regulate

the commissions to be paid by fire insurance companies to agents for soliciting and obtaining fire insurance contracts and policies, deprives the appellant of its liberty and property without due process of law by unreasonably and unduly interfering with the conduct of a lawful business, to wit, the business of an insurance agency. (2) Said statute in the respect mentioned in the aforegoing subdivision denies to the appellant the equal protection of the laws of the State of New Jersey since it unduly and unreasonably interferes with the right of the appellant to acquire, possess and protect property as provided in [fol. 37] Article 1, Section 1 of the Constitution of the State of New Jersey.

PRAYER FOR REVERSAL

For which errors the appellant, O'Gorman and Young, Inc., prays that the said judgment of the Court of Errors and Appeals of the State of New Jersey, dated the 25th day of July, 1929, in the above entitled cause, be reviewed by the upreme Court of the United States, and reversed, and a judgment rendered in favor of the appellant, and for costs.

Walter Gordon Merritt, McCarter and English, Attorneys for and of Counsel for Appellant.

The prayer of the above petition is denied Oct. 16, 1929.
E. R. Walker, Chancellor and President Judge of the Court of Errors and Appeals in the Last Resort in All Causes in New Jersey

[fol. 37½] [File endorsement omitted.]

[fol. 38] IN COURT OF ERRORS AND APPEALS OF NEW JERSEY

O'GORMAN AND YOUNG, INC., a Corporation of the State of New Jersey, Appellant,

against

PHOENIX ASSURANCE COMPANY, LTD., OF LONDON, a Corporation of Great Britain, Respondent

ORDER ALLOWING APPEAL

The appellant in the above entitled suit, having prayed for the allowance of an appeal in this cause to the Supreme

Court of the United States from the judgment made and entered in the above entitled suit in the Court of Errors and Appeals of the State of New Jersey on the 25th day of July, 1929, and from each and every part thereof, and having presented and filed its petition for appeal, assignment of errors, and prayer for reversal, pursuant to the statutes and the rules of the Supreme Court of the United States in such case made and provided:

It is now here ordered that an appeal be, and the same is hereby, allowed to the Supreme Court of the United States from the Court of Errors and Appeals of the State of New Jersey in the above entitled cause, as provided by law, and it is further ordered that the Clerk of the Court of Errors and Appeals of the State of New Jersey shall prepare and certify a transcript of the record, proceedings and judgment in this cause and transmit the same to the Supreme Court of the United States, so that he shall have the [fols. 39-47] same in said Court within thirty (30) days of this date.

And it is further ordered that security for costs on appeal be fixed in the sum of Five hundred dollars ($500.00).

Dated October 18th, 1929.

Louis D. Brandeis, Associate Justice, Supreme Court of the United States.

[fol. 48] In Supreme Court of the United States, October Term, 1929

No. 458

O'Gorman and Young, Inc., a Corporation of the State of New Jersey, Appellant,

against

Hartford Fire Insurance Company of Hartford, Connecticut, a Corporation of the State of Connecticut, Appellee

Statement of Points to be Relied Upon—Filed Oct. 24, 1929

Comes now the appellant in the above entitled cause and states that the points upon which it intends to rely in this Court in this case are as follows:

Point 1. The statute of the State of New Jersey, to wit: Chapter 128 of the Laws of 1928 entitled "An Act to Amend An Act Entitled A Further Supplement to an Act Entitled An Act to Provide for the Regulation and Incorporation of Insurance Companies and Regulate the Transaction of Insurance Business in This State," approved March 29, 1928, is unconstitutional and void as repugnant to Paragraph 1 of Section 10 of Article I of the Constitution of the United States, in that it impairs the obligation of existing contracts of the appellant.

Point 2. The aforesaid Act of the State of New Jersey is unconstitutional and repugnant to Section 1 of the Fourteenth Amendment of the Constitution of the United States, in that it deprives the appellant of its liberty and property without due process of law.

Point 3. The said Statute of the State of New Jersey is [fol. 48a] unconstitutional and repugnant to Section 1 of the Fourteenth Amendment of the Constitution of the United States, in that it denies the appellant the equal protection of the laws.

Point 4. The New Jersey Court of Errors and Appeals erred in ruling that the aforesaid statute of the State of New Jersey was a valid and constitutional regulation.

Walter Gordon Merritt, Counsel for Appellant.

[fol. 48b-48d] Acknowledgement of Service and Stipulation as to the Parts of the Record to be Printed

I, Ralph E. Lum, of Lum, Tamblyn & Colyer, attorneys of record for the Appellee, hereby acknowledge due and timely service of the above statement of points to be relied upon and designation of the parts of the record to be printed and agree that the said designation includes all parts of the record material and necessary to the consideration of the case, and hereby expressly waive all right to file a counterdesignation of parts of the record to be printed.

Dated October 22, 1929.

Ralph E. Lum, Counsel for Appellee.

[fol. 48e] [File endorsement omitted.]

[fol. 49] IN SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1929

No. 459

O'GORMAN AND YOUNG, INC., a Corporation of the State of New Jersey, Appellant,

against

PHOENIX ASSURANCE COMPANY, LTD., OF LONDON, a Corporation of Great Britain, Appellee

STATEMENT OF POINTS TO BE RELIED UPON—Filed Oct. 24, 1929

Comes now the appellant in the above entitled cause and states that the points upon which it intends to rely in this Court in this case are as follows:

Point 1. The statute of the State of New Jersey, to wit: Chapter 128 of the Laws of 1928 entitled "An Act to Amend An Act Entitled A Further Supplement to An Act Entitled An Act to Provide for the Regulation and Incorporation of Insurance Companies and Regulate the Transaction of Insurance Business in This State," approved March 29, 1928, is unconstitutional and void as repugnant to Paragraph 1 of Section 10 of Article I of the Constitution of the United States, in that it impairs the obligation of existing contracts of the appellant.

Point 2. The aforesaid Act of the State of New Jersey is unconstitutional and repugnant to Section 1 of the Fourteenth Amendment of the Constitution of the United States, in that it deprives the appellant of its liberty and property without due process of law.

Point 3. The said statute of the State of New Jersey is [fol. 50] unconstitutional and repugnant to Section 1 of the Fourteenth Amendment of the Constitution of the United States, in that it denies the appellant the equal protection of the laws.

Point 4. The New Jersey Court of Errors and Appeals erred in ruling that the aforesaid statute of the State of New Jersey was a valid and constitutional regulation.

Walter Gordon Merritt, Counsel for Appellant.

[fols. 51 & 52] Acknowledgement of Service and Stipulation as to the Parts of the Record to be Printed

I, Ralph E. Lum, of Lum, Tamblyn & Colyer, attorneys of record for the Appellee, hereby acknowledge due and timely service of the above statement of points to be relied upon and designation of the parts of the record to be printed and agree that the said designation includes all parts of the record material and necessary to the consideration of the case, and hereby expressly waive all right to file a counterdesignation of parts of the record to be printed.

Dated October 22, 1929.

Ralph E. Lum, Counsel for Appellee.

[fol. 53] [File endorsement omitted.]

[fol. 54] In Supreme Court of the United States, October Term, A. D. 1929

No. 458

O'Gorman and Young, Inc., a Corporation of the State of New Jersey, Appellant,

against

Hartford Fire Insurance Company of Hartford, Connecticut, a Corporation of the State of Connecticut, Appellee

No. 459

O'Gorman and Young, Inc., a Corporation of the State of New Jersey, Appellant,

against

Phœnix Assurance Company, Ltd., of London, a Corporation of Great Britain, Appellee

Stipulation of the Parts of the Records to be Printed in Order That the Two Records May be Printed under One Cover—Filed Nov. 1, 1929

It is hereby stipulated and agreed by and between counsel for the appellant in each case and counsel for the ap-

pellee in each case that only the following parts of the two records, as filed in this court, need be printed by the Clerk for the hearing of the cases, and that the same may be printed under one cover:

Case No. 458

Title of paper	Page
Complaint	5
Answer	9
Notice to strike out answer	12
[fol. 55] Additional ground on notice to strike out answer	14
Order denying motion to strike out answer and for judgment	16
Notice of appeal and grounds	24
Order on affirmance of Court of Errors and Appeals	30
Petition for appeal, statement, assignment of errors and prayer for reversal, together with order of Chancellor and President Judge of Court of Errors and Appeals denying petition endorsed thereon	32
Order allowing appeal	38

Case No. 459

Complaint	4
Answer	10
Notice to strike out answer	13
Additional ground on notice to strike out answer	15
Order denying motion to strike out answer and for judgment	16
Decision on motions to strike out answers	18
Notice of appeal and grounds	24
Opinion of Court of Errors and Appeals	27
Order on affirmance of Court of Errors and Appeals	30
[fols. 56 & 57] Petition for appeal, statement, assignment of errors and prayer for reversal, together with order of Chancellor and President	

Title of paper	Page
Judge of Court of Errors and Appeals denying petition endorsed thereon	32
Order allowing appeal	38

Dated October 31, 1929.

Walter Gordon Merritt, Counsel for O'Gorman & Young, Inc., Appellant in Each Case. Ralph E. Lum, Counsel for Appellee Hartford Fire Insurance Company and Appellee Phœnix Assurance Company, Ltd.

[fol. 58] [File endorsement omitted.]

Endorsed on cover: File No. 34,589. New Jersey Court of Errors and Appeals. Term No. 458. O'Gorman and Young, Incorporated, appellant, vs. Hartford Fire Insurance Company of Hartford, Connecticut. Filed October 24, 1929. File No. 34,589.

Endorsed on cover: File No. 34,590. New Jersey Court of Errors and Appeals. Term No. 459. O'Gorman and Young, Incorporated, appellant, vs. Phœnix Assurance Company, Ltd., of London. Filed October 24, 1929. File No. 34,590.